AJE BEST-ON SDN BHD

v.

YB AHMAD OMAR & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUIT NO: S2-22-159-1998]
7 JUNE 2000

CIVIL PROCEDURE: *Time - Time limit to file notice of appeal - Computation of - Whether includes Saturdays*

The plaintiff filed an application for summary judgment against the defendants. The SAR dismissed the application on 6 April 1999. The plaintiff on 13 April 1999 filed a notice of appeal appealing against the decision. At the hearing of the appeal, the counsel for the defendants citing O. 56 r. 1(3) Rules of the High Court 1980, raised a preliminary objection that the notice of appeal was filed out of time.

Held:

[1] Where the period to be calculated would include the day before the weekly holiday, then in computing the required number of days so long as it is seven days or less, the court ought not exclude in its calculation the day before the weekly holiday. Therefore, in this instant case, the court ought to include the Saturday in its calculation and this would mean that the required five days would end on 12 April 1999.

[Preliminary objection upheld; appeal dismissed.]

Case(s) referred to:
Chern Yen Ming & Anor v. Teng Ik Ngee Construction Sdn Bhd Ors (Chern Boon Hong & Anor, Third Parties) [1996] 1 CLJ 571 ***(refd)***

Legislation referred to:
Interpretation Acts 1948 & 1967, s. 54(1)(b)
Rules of the High Court 1980, O. 3 r. 2(5), O. 56 r. 1(3)

For the appellant - Tieh Siaw Siong; M/s Paul Ong & Assoc
For the respondents - S Maniarasan; M/s Soh Hayati & Co

Reported by Izzaty Izzuddin

a

JUDGMENT

RK Nathan J:

Facts

b The plaintiff sued the defendants as guarantors on 12 March 1998 in respect of credit facilities given to one Euro Elegant Sdn Bhd for a sum of RM459,839.76 with interest and costs. The defendants entered appearance on 18 May 1998. The plaintiff then filed an application (encl. 4) for summary judgment for the said sum on 16 June 1998. On 11 August 1998 when the said application came up for hearing, the defendants were c ready to defend the application. The plaintiff then applied to withdraw encl. 4 and the same was struck out with costs.

The plaintiff then refiled the same application for summary judgment against both the defendants (encl. 8). In the meantime, the defendants filed d their defence on 3 June 1998. Having heard arguments the learned senior assistant registrar (SAR) dismissed the plaintiff's application with costs on 6 April 1999.

The Appeal

e This is the plaintiff's appeal against that decision. Before me the defendants raised a preliminary objection having given prior notice to the plaintiff/ appellant.

The Preliminary Objection

f The preliminary objection was that the notice of appeal, which was filed on 13 April 1999, was filed out of time. Order 56 r. 1(3) of the Rules of the High Court 1980 (the RHC) reads as follows:

> (3) Unless the court otherwise order, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and g served not less than 2 clear days before the day fixed for hearing the appeal.

The learned SAR's decision was given on 6 April 1999. Pursuant to O. 56 r. 1(3) of the RHC the notice of appeal ought to have been issued on or before 11 April 1999. There is no evidence before me as to when the said notice was actually served on the defendants' solicitors. So I shall not h consider this part of the rule.

In *Chern Yen Ming & Anor v. Teng Ik Ngee Construction Sdn Bhd & Ors (Chern Boon Hong & Anor, Third Parties)* [1996] 1 CLJ 571 the court, in allowing a similar preliminary objection held, in construing the meaning i of the word "issued" under O. 56 r. 1(3) of the RHC that it would be

deemed issued when the notice of appeal to the judge in chambers was actually signed, sealed and dated, and that it is on that date that the court must construe that it is issued. I would accept this as correctly setting down the meaning of the word "issued". However, in so far as this case is concerned the notice of appeal was signed, sealed and dated, all on 13 April 1999.

I have checked the calendar for the month of April 1999. The 6 April falls on a Tuesday and 11 April, which is the last day for filing the notice of appeal, falls on a Sunday.

It is relevant therefore now to consider O. 3 r. 2(5) of the RHC which reads as follows:

> (5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include the day before the weekly holiday, the weekly holiday or public holiday, that day shall be excluded.

Section 54(1)(b) of the Interpretation Act 1948 (the Act) is also relevant. It reads as follows:

> 54. Computation of time.
>
> (1) In computing time for the purposes of any written law:
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> …
>
> (b) if the last day of the period is a weekly holiday or a public holiday (referred to in this sub-section as excluded days) the period shall include the next following day which is not an excluded day;

Therefore it is clear from these two authoritative guidelines that since the last date for filing the notice of appeal falls on the 11th being a Sunday, then I shall have to, pursuant to O. 3 r. 2(5), exclude the 11th from the computation and pursuant to s. 54(1)(b) of the Act, include the next following day into the computation of the days to be counted for filing the notice of appeal. This means that the last day for filing the notice of appeal was 12 April 1999. Since the notice was filed on 13 April 1999 it is out of time.

Counsel for the appellant argued that pursuant to O. 3 r. 2(5) of the RHC, I should, in computing the days, also exclude "the day before the weekly holiday". In other words, he wanted me to exclude 10 April which was a Saturday from the computation. If he is correct in his submission then clearly he is on time when he filed the notice of appeal on 13 April. But that is not how this sub-r. (5) is to be interpreted. Where the period to be

calculated would include the day before the weekly holiday, then in computing the required number of days so long as it is seven days or less, the court ought not to exclude in its calculation, that day before the weekly holiday. In other words, in so far as this case is concerned, the court ought to include the Saturday in its calculation and which means that the required five days would end on Monday, 12 April 1999.

Since the plaintiff insisted on his calculation and did not seek the court's indulgence for an extension of time to file the notice of appeal, I upheld the preliminary objection and dismissed the appeal with costs.